



October 11, 2000

Ms. Teresa Borders  
City Secretary  
City of Brazoria  
201 South Main Street  
Brazoria, Texas 77422

OR2000-3912

Dear Ms. Borders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140121.

The City of Brazoria (the "city") received two requests for information pertaining to an internal affairs investigation of a city police officer including employee evaluations, complaints, disciplinary actions, commendations and information regarding the officer's termination. You state that you have released the requested information that you believe is open to the public. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information is excepted under section 552.108(a)(1). Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the internal investigation involves criminal charges filed by the sheriff's department which have been forwarded to the grand jury by the district attorney. Further, all personnel records and the internal affairs investigation pertaining to the officer have been provided, under subpoena, to the district attorney's office for the criminal case. Therefore, we conclude that the release of the information would interfere with the detection, investigation, and prosecution of crime. Gov't Code § 552.108(a)(1); *See* Open Records Decision

No. 474 (1987) (where incident is still under active investigation, section 552.108 may be invoked by any proper custodian of information which relates to incident). Therefore, the city may withhold the submitted information under section 552.108(a)(1).<sup>1</sup>

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>1</sup>Because we have found the information to be excepted from disclosure under section 552.108, we need not address section 552.103.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 140121

Encl: Submitted documents

cc: Mr. Jason L. Bell  
P.O. Box 1822  
Brazoria, Texas 77422  
(w/o enclosures)

cc: Mr. Carlos Armintor  
Reporter  
The Facts  
P.O. Box 549  
Clute, Texas 77531  
(w/o enclosures)